

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE) C-11-02509 LHK
ANTITRUST LITIGATION,)
) SAN JOSE, CALIFORNIA
)
) MAY 1, 2014
THIS DOCUMENT RELATES TO:)
ALL ACTIONS) PAGES 1-37
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: JOSEPH SAVERI LAW FIRM
BY: JOSEPH SAVERI
JAMES G. DALLAL
255 CALIFORNIA STREET, SUITE 450
SAN FRANCISCO, CALIFORNIA 94111

LIEFF, CABRASER,
HEIMANN & BERNSTEIN
BY: KELLY M. DERMODY
BRENDAN P. GLACKIN
DEAN M. HARVEY
275 BATTERY STREET, 30TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR DEFENDANT	JONES DAY
INTUIT:	BY: DAVID C. KIERNAN
	555 CALIFORNIA STREET, 26TH FLOOR
	SAN FRANCISCO, CALIFORNIA 94104
FOR DEFENDANTS	COVINGTON & BURLING
PIXAR AND	BY: EMILY J. HENN
LUCASFILM:	333 TWIN DOLPHIN DRIVE, SUITE 700
	REDWOOD SHORES, CALIFORNIA 94065

1 SAN JOSE, CALIFORNIA

MAY 1, 2014

2 P R O C E E D I N G S

3 (COURT CONVENED AT 3:01 P.M.)

4 THE CLERK: CALLING CASE NUMBER C-11-02509 LHK, IN
5 RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION.

6 MR. SAVERI: GOOD AFTERNOON, YOUR HONOR.
7 JOSEPH SAVERI, JOSEPH SAVERI LAW FIRM ON BEHALF OF PLAINTIFFS.

8 MS. DERMODY: GOOD AFTERNOON, YOUR HONOR.
9 KELLY DERMODY, LEIFF CABRASER. WITH ME FROM MY FIRM IS
10 BRENDAN GLACKIN AND DEAN HARVEY.

11 AND ALSO FROM THE SAVERI FIRM IS JAMES DALLAL.

12 THE COURT: OKAY. GOOD AFTERNOON.

13 MR. KIERNAN: GOOD AFTERNOON, YOUR HONOR.
14 DAVID KIERNAN ON BEHALF OF INTUIT.

15 THE COURT: OKAY. GOOD AFTERNOON.

16 MS. HENN: GOOD AFTERNOON, YOUR HONOR. EMILY HENN
17 FROM COVINGTON & BURLING FOR DEFENDANTS PIXAR AND LUCASFILM.

18 THE COURT: OKAY. GOOD AFTERNOON.

19 OKAY. ARE THERE ANY UPDATES ON THE NUMBER OF CLAIM FORMS,
20 OPT OUTS, OR OBJECTIONS?

21 MS. DERMODY: I'M SO GLAD YOU ASKED, YOUR HONOR.
22 YES, I HAVE AN UPDATE.

23 THE COURT: OKAY.

24 MS. DERMODY: AND I HAVE A REVISED PROPOSED ORDER
25 THAT REFLECTS SOME OF THOSE NUMBERS WHICH I'LL PASS UP AND I

1 CAN POINT OUT TO YOU.

2 THE COURT: OKAY. THANK YOU.

3 MS. DERMODY: DEFENSE COUNSEL HAVE COPIES AS WELL.

4 SO, YOUR HONOR, IF YOU WOULD TURN TO PAGE 3, WHICH IS
5 PARAGRAPH 9, IT HAS AN UPDATED LIST OF WHO HAS TIMELY OPTED OUT
6 AND WHO HAS FILED CLAIMS.

7 YOU MIGHT NOTE THAT THE OPT OUT NUMBER OF TIMELY OPT
8 OUTS --

9 THE COURT: HAS DECREASED.

10 MS. DERMODY: -- HAS DECREASED. AND WE HAD THE SAME
11 QUESTION. IT TURNED OUT THAT THERE WERE A NUMBER OF PEOPLE WHO
12 SUBMITTED DUPLICATES, AND ONCE HEFFLER DID AN AUDIT OF WHO HAD
13 ACTUALLY OPTED OUT AND NOT JUST A COUNT OF WHAT WAS RECEIVED,
14 THEY DISCOVERED THESE DUPLICATES AND THE NUMBER WENT DOWN.

15 THE COURT: I SEE. SO THERE WERE 30 DUPLICATES IT
16 LOOKS LIKE.

17 MS. DERMODY: THERE WERE QUITE A FEW, YES, YOUR
18 HONOR.

19 THE COURT: OKAY.

20 MS. DERMODY: AND THEN FOR THE CLAIMS, CLAIMS HAVE
21 GONE UP AND IT'S NOW 11,055 CLASS MEMBERS WHO HAVE FILED
22 CLAIMS.

23 THERE HAVE BEEN NO OBJECTIONS RECEIVED SINCE WE LAST
24 REPORTED, TIMELY OR UNTIMELY.

25 THE COURT: OKAY. SO THE SAME FIVE?

1 MS. DERMODY: YES. IN THE COUNT I GAVE YOU FOR THE
2 CLAIMANTS, THAT INCLUDES SOME PEOPLE WHO FILED CLAIMS LATE.

3 WE, AND THE SETTLING DEFENDANTS TOGETHER, HAVE DISCUSSED
4 OUR VIEW ON THAT AND WE WOULD REQUEST THAT THE COURT ACCEPT THE
5 LATE CLAIMS.

6 THE COURT: YES.

7 MS. DERMODY: GREAT.

8 THE COURT: OKAY. SO HOW MUCH WILL -- HAS THE WINDOW
9 NOW CLOSED TO SUBMIT A CLAIM FORM?

10 MS. DERMODY: YES, YOUR HONOR.

11 THE COURT: OKAY. SO HOW MUCH WILL EACH CLAIMANT
12 GET?

13 MS. DERMODY: SO IF YOU JUST DID A STRAIGHT AVERAGE
14 OF THE SETTLEMENT FUND AND THE CLAIMANTS --

15 THE COURT: UM-HUM.

16 MS. DERMODY: -- IT WOULD BE 1,809. IF YOU INCLUDED
17 ALL OF THE FEES REQUESTED AND COSTS REQUESTED, THAT WOULD GO TO
18 995, AND WE CAN TALK ABOUT THAT, YOUR HONOR.

19 THE NUMBER -- THE AMOUNT OF THE CLAIM WILL BE AFFECTED BY
20 WHAT A PERSON'S BASE SALARY WAS. SO THAT'S JUST AN AVERAGE.
21 IT REALLY IS JUST DIVISION.

22 THE COURT: OKAY. SO I'M A LITTLE BIT UNCLEAR. SO
23 THE FUND IS 20 MILLION.

24 MS. DERMODY: YES.

25 THE COURT: AND YOU'RE ASKING FOR 100,000 FOR SERVICE

1 AWARDS. YOU'RE ASKING FOR FEES OF 5 MILLION, AND COSTS OF
2 \$3,699,844.41.

3 MS. DERMODY: YES.

4 THE COURT: SO THAT LEAVES \$11,200,155.65.

5 AND ALL OF MY CALCULATORS ARE NOW UPSTAIRS. DO WE HAVE
6 ANY --

7 MS. DERMODY: THE ONLY -- THE ONLY THING MISSING FROM
8 MY CALCULATION, YOUR HONOR, OF THE 995 IS I DIDN'T INCLUDE THE
9 SERVICE AWARD NUMBER. WE CAN REDO THE CALCULATION TO INCLUDE
10 THAT.

11 THE CLERK: VIKRAM HAS GONE TO GET ONE.

12 THE COURT: OH, OKAY. THANK YOU.

13 MS. DERMODY: BUT IT'LL BE A RANGE. THERE WILL BE
14 SOME PEOPLE WHO MADE A LESS AMOUNT OF MONEY DURING THE CLASS
15 PERIOD WHO WORKED MAYBE ONLY A YEAR, SOME PEOPLE WORKED FOR
16 FOUR YEARS, AND SO THERE MIGHT BE A MIX ABOVE AND BELOW THAT.

17 THE COURT: OKAY. THANK YOU.

18 HM. I'M NOT GETTING THE SAME NUMBERS.

19 WHAT -- SO I'M UNCLEAR. I THOUGHT THAT THE -- HOW DO YOU
20 CALCULATE THE 1809? OH, I SEE WHAT YOU'RE SAYING. YOU'RE
21 SAYING 1809 IS --

22 MS. DERMODY: 20 MILLION DIVIDED BY 11,055.

23 THE COURT: OH, I SEE.

24 MS. DERMODY: I WAS JUST GIVING YOU A STRAIGHT, WHAT
25 DOES THAT LOOK LIKE IN TERMS OF THE, THE AWARD PER CLASS MEMBER

1 AND WHAT IS THE BENEFIT CONFERRED ON THEM, AND PART OF THE
2 BENEFIT CONFERRED ON THE CLASS MEMBER IS THAT THEY DIDN'T FRONT
3 ANY COSTS OR FEES FOR THE RESULT IN THE CASE.

4 SO SOME COURTS MIGHT CONSIDER THAT TO BE PART OF THEIR PRO
5 RATA ALLOCATION, IF YOU WILL I WANTED TO GIVE YOU BOTH NUMBERS
6 BECAUSE I THINK THE COURT MIGHT BE MORE INTERESTED IN WHAT THEY
7 ACTUALLY ARE GOING TO TAKE HOME.

8 THE COURT: WELL, I GET 1,013 IF I TAKE \$11,200,155
9 AND DIVIDE IT BY 11,055 PEOPLE. SO WHERE ARE YOU --

10 MS. DERMODY: OH, OKAY. MR. HARVEY JUST ALERTED ME
11 THAT THERE WAS A -- A MATH MISTAKE IN TERMS OF THE COST NUMBER.

12 YOU'RE RIGHT, YOUR HONOR. YOU'RE EXACTLY RIGHT. IT'S A
13 HIGHER NUMBER THAN I GAVE YOU.

14 THE COURT: OKAY. SO IT'S THE 1,013. OKAY. WAS
15 THERE A DIFFERENCE IN THE NUMBER OF EITHER OPT OUTS OR CLAIMS
16 FOR THE LUCASFILM/PIXAR SETTLEMENT VERSUS THE INTUIT
17 SETTLEMENT?

18 MS. DERMODY: NO, NO. IN FACT, I DON'T THINK THERE
19 ARE EVEN MORE PEOPLE THAT WERE PICKY ABOUT -- IF THEY STAYED
20 IN, THEY STAYED IN TO BOTH, AND IF THEY OPTED OUT, THEY OPTED
21 OUT OF BOTH.

22 THE COURT: OKAY. NOW, I KNOW YOUR SETTLEMENT WITH
23 REGARD TO THE OTHER FOUR DEFENDANTS IS STILL CONFIDENTIAL, BUT
24 HOW ARE YOU GOING TO HANDLE FEES AND COSTS WITH WHAT YOU'RE
25 REQUESTING HERE?

1 MS. DERMODY: WELL, IT WOULD BE -- I WOULD SEEK YOUR
2 GUIDANCE, YOUR HONOR, ACTUALLY. I THINK OUR VIEW OF WHERE WE
3 ARE TODAY IS THAT CERTAINLY THE COST SUBMISSION, I THINK, IS
4 RIPE. I THINK BOTH ARE RIPE, BUT I THINK THE COST SUBMISSION
5 IS RIPE AND WOULD BE APPROPRIATE TO PAY TODAY.

6 IT'S THE COSTS THAT WERE ACCRUED BEFORE PRELIMINARY
7 APPROVAL IN THIS CASE.

8 THE FEE NUMBER, YOUR HONOR MIGHT PREFER THAT WE DEFER
9 THAT, TO DECIDE THE FEE NUMBER ALL AT ONCE WITH THE NEXT
10 SETTLEMENT, AND I THINK WE WOULD BE AMENABLE TO THAT, YOUR
11 HONOR.

12 SO I THINK IT'S REALLY A QUESTION AS TO THE PREFERENCE THE
13 COURT HAS ABOUT WHAT IS THE RECORD UPON WHICH THE COURT IS
14 DETERMINING THE FEE.

15 WE WOULD CALL --

16 THE COURT: WELL, THE RECORD HERE, I NEED
17 SUPPLEMENTATION, EVEN IF IT WERE JUST TO BE A DECISION ON THIS
18 CURRENT FEE REQUEST.

19 MS. DERMODY: IT WOULD BE GREAT TO HEAR YOUR
20 THOUGHTS, YOUR HONOR --

21 THE COURT: WHAT WOULD BE THE BENEFIT OF WAITING
22 UNTIL LATER? THAT WOULD HOLD UP AT LEAST THE PAYMENT TO THE
23 CLASS MEMBERS.

24 MS. DERMODY: YEAH. I THINK, YOUR HONOR, THERE'S TWO
25 ORDERS THAT HAVE BEEN SUBMITTED TO THE COURT. ONE IS THE FINAL

1 APPROVAL ORDER.

2 THE ONE I JUST PASSED UP TO YOU IS ABOUT DETERMINING
3 WHETHER THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE FOR
4 THE CLASS.

5 THE COURT: OKAY.

6 MS. DERMODY: WHETHER IT CAN BE APPROVED AND A
7 JUDGMENT CAN BE ENTERED AS TO THE CLASS CLAIMS AGAINST THESE
8 DEFENDANTS. WE THINK THAT THERE'S A TERRIFIC RECORD TO SUPPORT
9 THAT AND THAT CAN BE DONE TODAY, FULL STOP.

10 THEN THERE'S ALSO THE QUESTION OF WHAT TO DO ABOUT THE
11 FEES, COSTS, AND SERVICE AWARDS.

12 THE COURT: UM-HUM.

13 MS. DERMODY: AGAIN, WE THINK THAT THE RECORD IS
14 THERE TO SUPPORT THAT. I UNDERSTAND THERE MIGHT BE SOME
15 QUESTIONS.

16 BUT HAVING BEEN IN A POSITION NOW OF LOOKING AT WHAT'S
17 GOING TO BE HAPPENING NEXT AND WHETHER THE COURT WANTS TO
18 CONSIDER ALL OF THAT IN TERMS OF THE FEE AWARD, WE WOULD BE
19 WILLING TO DEFER OUR REQUEST FOR THE FEE AWARD UNTIL THE
20 SETTLEMENT IS --

21 THE COURT: I DON'T THINK THERE'S A NEED TO DO THAT.
22 WHAT IF I DON'T ACCEPT YOUR SETTLEMENT WITH THE OTHER
23 DEFENDANTS?

24 MS. DERMODY: OKAY. YES, YOUR HONOR. I MEAN, WE --
25 WE WANTED TO ASK YOUR GUIDANCE ON THAT.

1 THE COURT: THEY'RE IN A DIFFERENT POSITION THAN
2 THESE FOLKS.

3 MS. DERMODY: THAT'S ABSOLUTELY TRUE, YOUR HONOR,
4 YES.

5 THE COURT: THEY ARE POST SUMMARY JUDGMENT; THEY ARE
6 POST NINTH CIRCUIT DENIAL OF INTERLOCUTORY APPEAL OF MY CLASS
7 CERTIFICATION ORDER; THEY ARE POST DAUBERT. THEY'RE IN A
8 DIFFERENT BOAT THAN THESE FOLKS.

9 MS. DERMODY: SO THAT TAKES US BACK TO YOUR QUESTION,
10 YOUR HONOR, ABOUT WHAT ELSE YOU WOULD WANT TO SEE TO MAKE A
11 DECISION NOW SO WE CAN DO WHAT THE COURT WOULD LIKE.

12 THE COURT: OKAY. WELL, I AM NOT GOING TO TREAT THIS
13 CASE ANY DIFFERENTLY THAN ANY OTHER CLASS ACTION. I REQUIRE
14 THE CONTEMPORANEOUS BILLING RECORDS BECAUSE I DO WANT TO DO A
15 LODESTAR CHECK.

16 I SAW YOUR DECLARATION, PARAGRAPH 16, WHICH SAYS, "WELL,
17 THESE ARE MY FIRM'S BILLING RATES." I DON'T KNOW WHAT THAT
18 MEANS. DOES THAT MEAN THAT'S WHAT YOU WOULD CHARGE A PRIVATE
19 CLIENT? IS THAT WHAT'S BEEN APPROVED BY OTHER COURTS?

20 I -- YOU KNOW, I'M JUST -- I MEAN, I AM OBVIOUSLY MORE
21 FAMILIAR WITH WHAT THE PLAINTIFFS' ATTORNEYS HAVE DONE IN THIS
22 CASE BECAUSE IT'S BEEN SO HEAVILY LITIGATED, SO, YOU KNOW, IN
23 SOME SENSE LESS PROOF IS REQUIRED.

24 BUT ON THE OTHER HAND, I DON'T SEE ANY REASON WHY I SHOULD
25 TREAT THIS ONE DIFFERENTLY THAN ANY OTHER CASE WHERE I WOULD

1 REQUIRE CONTEMPORANEOUS BILLING RECORDS TO BE SUBMITTED FOR THE
2 LODESTAR CHECK. I WOULD REQUIRE MORE SPECIFICS AS TO WHERE THE
3 BILLING RATES ARE JUSTIFIED.

4 NOW, I'M NOT SAYING I'M DISPUTING OR WILL NOT ACCEPT THE
5 RATES. I JUST, YOU KNOW -- ALSO, IN THE EVENT --

6 LET ME FIRST START OFF, ARE ANY OF THE SIX INDIVIDUALS WHO
7 SUBMITTED OBJECTIONS AND STATEMENTS PRESENT? I KNOW THEY SAID
8 THEY WERE GOING TO BE PRESENT. LET ME -- ERIC GROSSE,
9 EMMA MERRELL, TOM SANOCKI, JEFFREY BROWN, CONRAD MINSHALL, ARE
10 ANY OF THEM PRESENT? I KNOW THAT AT LEAST ONE OF THEM SAID
11 THEY WERE DEFINITELY GOING TO BE HERE.

12 ANYONE ELSE HERE WHO WANTED TO SPEAK ABOUT THIS
13 SETTLEMENT?

14 ALL RIGHT. THE RECORD SHOULD REFLECT THAT IT'S NOW 3:13.
15 THIS HEARING WAS SET AT 1:30, AND NONE OF THE INDIVIDUALS WHO
16 SUBMITTED OBJECTIONS ARE PRESENT AND NO ONE ELSE HAS STATED AN
17 INTEREST IN SPEAKING UP ABOUT THIS SETTLEMENT.

18 MS. DERMODY: YOUR HONOR, MAY I ADDRESS WHAT YOU JUST
19 RAISED IN TERMS OF THE DECLARATION AND THE COST APPLICATION?

20 THE COURT: YEAH.

21 MS. DERMODY: I WANT TO MAKE SURE I KNOW WHAT
22 PARAGRAPH YOU WERE ADDRESSING. SO JUST TO BE SURE, PARAGRAPH
23 16 --

24 THE COURT: SURE.

25 MS. DERMODY: -- REFERS TO EXHIBIT 8. EXHIBIT 8 HAS

1 THE HOURS AND THE RATES IN OTHER CASES THAT I'VE PERSONALLY
2 BEEN IN IN THE NORTHERN DISTRICT.

3 THE COURT: YEAH.

4 MS. DERMODY: THIS SUMMARY SUBMISSION HAS BEEN
5 ACCEPTABLE TO OTHER JUDGES -- NOT THAT IT SHOULD BE TO YOU,
6 YOUR HONOR -- BUT I JUST WANTED TO MAKE SURE THAT IT WAS CLEAR
7 THAT THIS WAS NOT JUST THE RATES, BUT ACTUALLY THE HOURS SPENT
8 BY THESE TIME KEEPERS IN THIS CASE.

9 THE COURT: OKAY.

10 MS. DERMODY: AND THAT THE COURT WAS AWARE THAT WE
11 DID SUBMIT THAT SO THE COURT COULD SEE EXACTLY WHO BILLED WHAT
12 AT WHAT RATE.

13 IF YOUR HONOR WOULD LIKE US TO ALSO SUBMIT --

14 THE COURT: OH, I SEE WHAT YOU'RE SAYING, THAT THAT
15 HAS BEEN PAID BY YOUR HOURLY PAYING CLIENTS.

16 MS. DERMODY: YES.

17 THE COURT: OKAY. I FIND THAT TO BE PERSUASIVE.

18 MS. DERMODY: AND IN PARAGRAPH 8 IT SHOWS THE SUMMARY
19 OF WHAT THE BILLINGS WERE.

20 AND JUST TO AGAIN MAKE SURE I UNDERSTAND, IF THE COURT
21 DOES HAVE A CONCERN ABOUT THIS, DID YOU WANT THE DETAILED
22 BACKUP, YOUR HONOR? OR WOULD THIS -- IS THIS SUFFICIENT FOR
23 THE FIRM TO BE SHARING WITH YOU, THAT THIS IS WHAT THIS TIME
24 KEEPER BILLED AT THIS BILLING RATE?

25 AGAIN, THIS IS -- IT WOULD BE UNUSUAL IN THIS DISTRICT, IN

1 MY PERSONAL EXPERIENCE, TO BE PROVIDING THE BACKUP AND WE WOULD
2 REQUEST THAT IT BE SUBMITTED UNDER SEAL IN CAMERA BECAUSE IT'S
3 WORK PRODUCT PRIVILEGE.

4 THE COURT: UM-HUM.

5 MS. DERMODY: BUT IF THAT'S WHAT THE COURT WOULD
6 LIKE, OF COURSE WE WOULD DO THAT. I JUST WANT TO MAKE SURE
7 THAT THAT'S THE CONCERN THE COURT IS RAISING.

8 THE COURT: OKAY. WELL, AS FAR AS THE BILLING RATES,
9 I DIDN'T READ PARAGRAPH 16 CLOSELY ENOUGH. I FOCUSSED MORE ON
10 THE FIRST SENTENCE, WHICH JUST SAYS THESE ARE THE CURRENT
11 RATES.

12 YOU SAY THAT IS YOUR RATE STRUCTURE. THOSE EXACT HOURLY
13 RATES ARE PAID BY HOURLY PAYING CLIENTS?

14 MS. DERMODY: YES. THAT'S WHAT I CHARGE, YOUR HONOR.

15 THE COURT: OKAY. ALL RIGHT. AND THAT'S TRUE FOR
16 THE OTHERS THAT ARE LISTED ON EXHIBIT 8?

17 MS. DERMODY: YES, ABSOLUTELY.

18 THE COURT: ALL RIGHT. WELL, I'M SATISFIED THEN ON
19 THE BILLING RATE.

20 MR. SAVERI: AND, YOUR HONOR --

21 THE COURT: YES?

22 MR. SAVERI: YOUR HONOR, IF I MAY, THAT SUBMISSION
23 THAT MS. DERMODY WAS REFERRING TO WAS FOR THE LEIFF CABRASER
24 FIRM.

25 IF YOU LOOK AT THE OTHER LAWYERS THERE, THERE ISN'T

1 SIMILAR INFORMATION --

2 THE COURT: I KNOW.

3 MR. SAVERI: -- IN THE RECORD.

4 THE COURT: WE'RE GOING TO GET THERE.

5 MR. SAVERI: AND SO I -- WE SUBMITTED --

6 THE COURT: YOU'RE INCLUDED IN THE LEIFF CABRASER --

7 YOU'RE INCLUDED IN THE LEIFF CABRASER HOURLY RATE, EXHIBIT 8?

8 MR. SAVERI: WHEN I WAS -- AND THAT'S --

9 MS. DERMODY: AND HERE.

10 MR. SAVERI: THAT'S MY TIME WHEN I WAS A PARTNER OF
11 MS. DERMODY'S.

12 THE COURT: OKAY.

13 MR. SAVERI: SO I HAVE ADDITIONAL TIME THAT -- AND
14 THERE ARE OTHER LAWYERS IN THE CASE THAT HAVE NOT SUBMITTED THE
15 SAME DETAIL THAT MS. DERMODY SUBMITTED FOR HER FIRM.

16 I'M CERTAINLY PREPARED TO DO THAT. I CAN DO THAT TODAY.
17 I HAVE A DECLARATION TO THAT EFFECT.

18 THE COURT: WELL, WHY WAS IT ONLY LEIFF CABRASER THAT
19 SUBMITTED THIS INFORMATION? IS IT JUST BECAUSE THAT EXCEEDS
20 THE 5 MILLION?

21 MS. DERMODY: ABSOLUTELY.

22 THE COURT: AND SO YOU THOUGHT IT WASN'T NECESSARY TO
23 DO THE REST?

24 MS. DERMODY: ABSOLUTELY. I UNDERSTOOD THAT YOUR
25 HONOR, WHO IS SO FAMILIAR WITH THIS CASE, HAS SEEN PROBABLY

1 MORE OF US THAN YOU WOULD EVER LIKE TO SEE AGAIN AND KNEW THAT
2 THERE WAS A LOT MORE WORK BEING DONE BY A LOT MORE PEOPLE, THAT
3 YOU WOULD HAVE A SENSE OF THE DIMENSION HERE, THAT WE'RE
4 TALKING ABOUT QUITE A DEGREE HIGHER THAN THAT. SO WE JUST
5 DIDN'T GO TO THE TROUBLE OF COLLECTING ALL THAT INFORMATION.

6 BUT OF COURSE IF YOUR HONOR IS CONCERNED, WE WILL DO THAT
7 RIGHT AWAY.

8 MR. SAVERI: AND JUST SO THE RECORD IS CLEAR, I'M
9 PREPARED TO HAND YOU A DECLARATION RIGHT NOW OR MAKE WHATEVER
10 REPRESENTATION THE COURT WOULD REQUIRE WITH RESPECT TO THAT.

11 THE COURT: WELL, I'M ACTUALLY -- I MEAN, I WAS GOING
12 TO ASK YOU, WHAT WAS THE ROLE OF BERGER & MONTAGUE AND
13 GRANT & EISENHOFER? OTHER THAN PUTTING UP MONEY FOR THE COSTS?
14 WHAT WAS THEIR ROLE?

15 MS. DERMODY: SO THEIR ROLE, YOUR HONOR, WAS A ROLE
16 THAT'S COMMON IN A CASE THAT'S THIS LARGE WHERE THEY DID AN
17 EXTRAORDINARY AMOUNT OF ASSISTANCE WITH DOC REVIEW; PREPARING
18 FOR DEPOSITIONS; THEY WERE INVOLVED IN THE TAKING OF SOME
19 DEPOSITIONS, INCLUDING SOME EXPERTS WHERE THEY FIRST CHAIRED;
20 THEY WERE INVOLVED IN SOME VERY MAJOR STRATEGY QUESTIONS DURING
21 THE CASE; THEY DID THE DRAFTING OF CERTAIN BRIEFS, INCLUDING
22 THE MOTIONS IN LIMINE WORK.

23 AND SO THEY WERE -- THEY WERE PART OF OUR TEAM. THEY
24 WEREN'T THE EVERY DAY CAPTAINS OF THE TEAM, BUT THEY CERTAINLY
25 DID A LOT OF HEAVY LIFTING THROUGHOUT THE CASE.

1 THE COURT: SO, YOU KNOW, MY EARLIER QUESTION ABOUT
2 HOW YOU WERE GOING TO DEAL WITH FEES AND COSTS IS THAT IF YOU
3 DON'T BREAK IT DOWN, I DON'T KNOW WHAT I AM COMPENSATING WITH
4 THIS 5 MILLION VERSUS WHAT WOULD BE COMPENSATED BY ANY
5 ADDITIONAL ATTORNEYS' FEES AWARD. DO YOU SEE WHAT I'M SAYING?

6 IF I HAVE NO BREAKDOWN OF WHAT WORK OF THE 8 MILLION THAT
7 YOU'VE ASSERTED HAS BEEN SPENT ON LITIGATING THIS CASE BY
8 LEIFF CABRASER, ARE YOU JUST GOING TO SAY THIS IS THE 8,
9 SUBTRACT 5, AND THEN I'M GOING TO ASK FOR THE ADDITIONAL 3 IN
10 THE OTHER SETTLEMENTS AND THEN THE OTHER LAW FIRMS ARE GOING TO
11 COME IN AND ASK FOR THEIR FEES? I'M JUST UNCLEAR.

12 MS. DERMODY: SURE, YOUR HONOR.

13 I MEAN, AGAIN, THIS -- WHATEVER THE COURT WOULD LIKE IS
14 WHAT WE WILL ABSOLUTELY DO.

15 I THINK WE WERE INFORMED BY THE NINTH CIRCUIT PRECEDENT ON
16 THE 25 PERCENT BENCHMARK --

17 THE COURT: UM-HUM.

18 MS. DERMODY: -- AND STRIVING TO SHOW THE COURT WE
19 WEREN'T ASKING FOR ANY MULTIPLIER ON THAT, OR INCREASE ON THAT
20 BENCHMARK, THAT WE UNDERSTOOD THAT THERE IS GENERALLY A GOOD
21 PRACTICE OF HAVING A MULTIPLIER -- A LODESTAR CROSSCHECK ON THE
22 BENCHMARK --

23 THE COURT: UM-HUM.

24 MS. DERMODY: -- NOT ALWAYS REQUIRED.

25 IN FACT, SOME COURTS IN THIS DISTRICT DON'T REQUIRE THAT

1 IF PEOPLE AREN'T ASKING TO INCREASE ABOVE THE 25 PERCENT.

2 BUT NEVERTHELESS, WE WANTED TO GIVE THE COURT SOME COMFORT
3 THAT WE WEREN'T HAVING SOME ENORMOUS WINDFALL.

4 BUT I THINK CERTAINLY IF THE COURT PAYS OUT SOME PART OF
5 THE FEE HERE, I THINK THAT WE WILL COME BACK, IF I CAN PREVIEW
6 THIS, AND BE IN SORT OF THE SAME POSTURE AROUND THE NINTH
7 CIRCUIT CASE LAW IN ATTORNEYS' FEES, THAT WE WILL START WITH
8 WHAT THE BENCHMARK IS, AND THEN ALSO PRESENT A RECORD, I THINK
9 IN THAT SITUATION, LIKELY MUCH FULLER THAN THIS ONE, BUT TO
10 SHARE WITH THE COURT OUR VIEW OF WHAT THE CONTRIBUTION WAS AND
11 WHAT THE ACTUAL WORK WAS IN THE CASE.

12 THE COURT: I'LL SEE THE RECORDS THEN, BECAUSE I --
13 IF YOU'RE SAYING, "NO, I'M JUST GOING TO SUBMIT THE SAME THING,
14 BUT WITH A LITTLE MORE DETAIL LATER ON AND ASK FOR MORE MONEY
15 FOR THE SAME WORK --"

16 MS. DERMODY: OH, NO, YOUR HONOR, ABSOLUTELY NOT.
17 I'M SORRY.

18 THE COURT: I DON'T SEE, WHY SHOULD YOU BE TREATED
19 ANY DIFFERENTLY? I REQUIRE -- I REQUIRE CONTEMPORANEOUS
20 BILLING RECORDS IN EVERY CLASS ACTION WHERE I APPROVE
21 ATTORNEYS' FEES, SO WHY SHOULD YOU ALL BE EXEMPTED FROM THAT?

22 MS. DERMODY: LAST TIME WE HAD A SETTLEMENT APPROVED
23 BY YOU IN ONE OF MY CASES, YOUR HONOR, WE SUBMITTED EXACTLY
24 THIS FORM THAT IS IN --

25 THE COURT: IS THAT BUCCELLATO, WHICH WAS MY FIRST

1 ONE HERE ON THE BENCH?

2 MS. DERMODY: YEAH.

3 THE COURT: I DO NOT DO THAT ANYMORE.

4 MS. DERMODY: I JUST -- I DIDN'T MEAN TO SUGGEST THAT
5 YOU HAVE TO DO IT THAT WAY.

6 THE COURT: YEAH, I DON'T.

7 MS. DERMODY: YES.

8 THE COURT: I DON'T. I DON'T SEE ANY REASON WHY YOU
9 SHOULD GET SPECIAL TREATMENT.

10 MS. DERMODY: THEN YOU'RE RIGHT, YOUR HONOR, WE
11 SHOULDN'T GET SPECIAL TREATMENT. IF WHAT YOU WANT IS
12 CONTEMPORARY BILLING RECORDS --

13 THE COURT: AND ESPECIALLY IF YOU ARE GOING TO COME
14 BACK IN A MONTH AND ASK FOR THE SAME LODESTAR.

15 MS. DERMODY: ABSOLUTELY, YOUR HONOR.

16 THE COURT: ESPECIALLY IF YOU ARE GOING TO COME BACK
17 ASKING FOR MORE.

18 MS. DERMODY: WE CAN GET THAT TO YOU RIGHT AWAY.
19 THAT'S NOT A PROBLEM, YOUR HONOR.

20 THE COURT: I SHOULD SEE THAT.

21 MS. DERMODY: AGAIN, I WOULD JUST ASK IF WE CAN HAVE
22 PERMISSION TO FILE THAT IN CAMERA UNDER SEAL TO PROTECT THE
23 WORK PRODUCT PRIVILEGE THAT SHOWS ALL THE --

24 THE COURT: THAT'S FINE.

25 MS. DERMODY: THANKS.

1 THE COURT: THAT'S FINE.

2 I MEAN, IF THERE WERE OBJECTORS, THEN I WOULD SAY YOU
3 CAN'T FILE IT IN CAMERA AND UNDER SEAL BECAUSE I THINK THEY
4 HAVE A RIGHT TO KNOW WHAT THEY'RE OBJECTING TO AND WHETHER
5 THEIR OBJECTION -- TO REALLY PROVIDE A BASIS FOR THEIR
6 OBJECTION.

7 I DON'T ALLOW THAT TO BE UNDER SEAL AND IN CAMERA IN OTHER
8 CASES.

9 NOW, I'M NOT SAYING IT HAS TO BE DETAILED. IT COULD JUST
10 BE, YOU KNOW, "REVIEWED E-MAIL." IT DOESN'T HAVE TO GIVE ANY
11 WORK PRODUCT OR PRIVILEGED INFORMATION IN IT. I KNOW THAT
12 WOULD BE REALLY DIFFICULT IN THIS CASE BECAUSE IT'S BEEN GOING
13 ON FOR THREE YEARS ALMOST.

14 MS. DERMODY: IT'S A BIT OF A ROADMAP TO HOW WE -- I
15 MEAN, AT LEAST IN MY OWN FIRM'S BILLING RECORDS, I'M FAMILIAR
16 WITH HAVING A PAINT-BY-NUMBERS ON HOW WE APPROACH THE CASE.

17 THE COURT: YEAH.

18 MS. DERMODY: AND IT SAYS IF -- IF I CALLED MS. HENN
19 OR MR. KIERNAN ABOUT SOMETHING, THAT'S ON MY BILLING RECORDS,
20 WHICH IS THE ONLY REASON THAT I WOULD WANT TO HAVE THOSE UNDER
21 SEAL IS BECAUSE THEY DO HAVE THAT AMOUNT OF INFORMATION.

22 BUT, FRANKLY, YOUR HONOR, WE'RE MOST CONCERNED ABOUT
23 PLEASING THE COURT AND MAKING SURE THAT THE COURT UNDERSTANDS
24 WITH GREAT TRANSPARENCY WHAT WE DID HERE AND WHY WE ARE TRYING
25 TO SUPPORT THIS RECORD.

1 THE COURT: DO YOU HAVE A VIEW ON THIS, EITHER
2 DEFENSE COUNSEL?

3 MS. HENN: YOUR HONOR, IN OUR SETTLEMENT AGREEMENT WE
4 AGREED TO TAKE NO POSITION ON FEES OR COST REQUESTS.

5 THE COURT: OKAY. DO YOU HAVE ANY SENSE IF THERE ARE
6 GOING TO BE ANY OBJECTORS OTHER THAN THE FIVE THAT FILED THE
7 STATEMENT?

8 MS. DERMODY: I WOULD HAVE NO REASON TO BELIEVE THAT,
9 YOUR HONOR, NO.

10 AND YOU MIGHT HAVE NOTICED, I'M SURE YOU DID NOTICE, YOUR
11 HONOR, THAT THE OBJECTORS SORT OF RUN THE GAMUT OF THE CLASS
12 RESPONSE TO THE CASE, WHICH IS ON THE ONE HAND, "DON'T HURT OUR
13 COMPANIES, WE DON'T LIKE THIS LAWSUIT," TO ON THE OTHER HAND,
14 "WHY ISN'T IT SO MUCH MORE MONEY AND WHY DIDN'T YOU SUE THE
15 REST OF THE TECHNOLOGY INDUSTRY?"

16 YOU'VE JUST GOT KIND OF LIKE THE WHOLE MIX. SO SOME OF
17 THEM ARE NOT NECESSARILY OBJECTING TO A TERM SO MUCH AS WHAT
18 THE LAW PROVIDES OR THE IDEA OF A LAWSUIT LIKE THIS.

19 THE COURT: UM-HUM.

20 MS. DERMODY: THERE MAY BE MORE OF THAT.

21 THE COURT: WHO SAID TO SUE MORE PEOPLE? I DIDN'T
22 SEE THAT.

23 MS. DERMODY: THAT WAS MR. BROWN OR MR. -- I'M SORRY.
24 IT WAS MR. MINSHALL.

25 THE COURT: OKAY.

1 MS. DERMODY: HE WANTED US TO INCLUDE MORE OF THE
2 DATA ABOUT OTHER COMPANIES IN THE INDUSTRY.

3 THE COURT: WELL, I WILL ALLOW THIS TO BE FILED -- I
4 MEAN, IF YOU CAN SORT OF SANITIZE THE RECORDS SO IT'S JUST, YOU
5 KNOW, "CALL WITH OPPOSING COUNSEL" OR SOMETHING -- WELL, YOU
6 KNOW WHAT? I'LL ALLOW THIS TO BE FILED UNDER SEAL AND IN
7 CAMERA.

8 BUT I WOULD LIKE THE BILLING RECORDS, ESPECIALLY BECAUSE
9 YOU ARE GOING TO COME BACK AND ASK FOR MORE BASED ON THE SAME
10 WORK.

11 MS. DERMODY: SURE, YOUR HONOR. THAT MAKES SENSE.

12 THE COURT: NOW, THE FEE ORDER SAYS THAT THERE WERE
13 NO OBJECTIONS, BUT I DON'T THINK THAT'S CORRECT BECAUSE
14 MS. MERRELL SPECIFICALLY SAYS THAT THE COSTS AND THE FEES ARE
15 EXORBITANT. SO THAT, AT A MINIMUM, HAS TO BE CORRECTED.

16 MS. DERMODY: I'M SORRY, YOUR HONOR. I WAS GOING TO
17 RAISE THAT DURING THIS PRESENTATION. I SAW THAT TODAY.
18 BECAUSE WE HAD SUBMITTED THE FEE REQUESTS AND PROPOSED ORDER
19 BEFORE THE OBJECTION DEADLINE, AND THEN AFTER THE OBJECTION
20 DEADLINE, WE UPDATED THE CLAIMS OBJECTIONS AND OPT OUT NUMBERS
21 WITHOUT UPDATING THE FEE ORDER. THAT WAS OUR MISTAKE, AND IF
22 YOU WOULD LIKE US TO SUBMIT A NEW ONE, WE CAN DO THAT.

23 THE COURT: WELL, I AM GOING TO ASK YOU TO SUBMIT
24 BOTH A NEW PROPOSED ORDER GRANTING FINAL APPROVAL, AS WELL AS A
25 NEW FEE ORDER. AND YOU MAY HAVE HEARD FROM MY PREVIOUS CASE, I

1 WOULD LIKE ANALYSIS IN THE PROPOSED ORDERS AND LESS
2 CONCLUSIONS.

3 SO FOR THE FEE ORDER, OBVIOUSLY WE HAVE TO TAKE OUT THAT
4 NO OBJECTIONS WERE MADE BECAUSE I THINK THAT'S NOT ACCURATE.

5 I THINK WITH REGARD TO THE INCENTIVE PAYMENTS, THE
6 DECLARATIONS THAT THE NAMED PLAINTIFFS HAVE PROVIDED HAVE MORE
7 INFORMATION ABOUT THE RISK THEY'VE TAKEN WITH REGARD TO THEIR
8 EMPLOYMENT IN THE HIGH-TECH INDUSTRY. YOU KNOW, WHATEVER
9 ARGUMENTS THAT YOU HAVE IN DECLARATIONS, I'D LIKE THEM TO BE
10 INCLUDED IN THE ORDER.

11 SO THAT'S FOR THE ATTORNEYS' FEES.

12 FOR THE PROPOSED ORDER FOR FINAL APPROVAL, I'D LIKE AT
13 LEAST PARAGRAPHS 6 THROUGH 8 TO BE REDONE TO LAY OUT THE HANLON
14 FACTORS AND WHY THIS CASE APPROVAL IS APPROPRIATE.

15 I'M REQUIRED TO DO THAT ACCORDING TO THE NINTH CIRCUIT,
16 AND SO I'D LIKE IT TO BE DONE IN THE ORDER. LIKE THE ORDER
17 DOESN'T SAY, YOU KNOW, HOW MUCH DISCOVERY HAS BEEN TAKEN. IT
18 DOESN'T TALK AT ALL ABOUT THE RISK OF LITIGATION AND
19 MAINTAINING CLASS ACTION STATUS, ET CETERA.

20 SO JUST MAKE IT MORE CLEAR AS TO WHY THIS IS FAIR AND
21 REASONABLE IN THIS CASE.

22 MS. DERMODY: OKAY.

23 THE COURT: OKAY. I THINK -- SO THEN FOR ANY FUTURE
24 REQUESTS, WILL YOU THEN BE REQUESTING FOR THE OTHER LAW FIRMS,
25 OR HOW IS THAT GOING TO WORK?

1 MS. DERMODY: YES, YOUR HONOR. THE FEE REQUEST WAS
2 SUBMITTED ON BEHALF OF ALL PLAINTIFFS' COUNSEL, AND SO WE WOULD
3 SUPPLEMENT THE RECORD PER YOUR HONOR'S WISHES WITH THE
4 CONTEMPORANEOUS BILLING RECORDS.

5 THE COURT: OKAY. LET ME MAKE SURE I UNDERSTAND. SO
6 THIS GROUP OF PLAINTIFFS WERE 8 PERCENT OF THE TOTAL CLASS IN
7 TERMS OF NUMBER OF EMPLOYEES, BUT THEIR INCOME, OR WAGES, OVER
8 THE CLASS PERIOD WAS 5 PERCENT OF THE WAGES OF ALL CLASS
9 MEMBERS OVER THE CLASS PERIOD. DOES THAT SOUND RIGHT?

10 MS. DERMODY: THAT SOUNDS RIGHT.

11 THE COURT: OKAY. NOW, WHAT --

12 MS. DERMODY: DIFFERENT COMPANIES, DIFFERENT
13 COMPENSATION STRUCTURES.

14 THE COURT: RIGHT.

15 MR. KIERNAN: AND DIFFERENT DATES OF THE CLASS.

16 MS. DERMODY: RIGHT.

17 MR. KIERNAN: SO INTUIT HAD A SHORTER PERIOD.

18 MS. DERMODY: RIGHT.

19 THE COURT: OH, I SEE. OKAY. SO THAT'S SOME OF THE
20 EXPLANATION OF WHY.

21 MR. KIERNAN: RIGHT, BECAUSE SOMEONE CONTINUES TO
22 WORK THERE, SO YOU HAVE MORE PEOPLE --

23 THE COURT: GOT IT.

24 MR. KIERNAN: -- BUT THERE'S A SHORTER PERIOD OF
25 COMPENSATION.

1 THE COURT: GOT IT. OKAY.

2 WHAT I DIDN'T UNDERSTAND IS THERE ARE A NUMBER OF PLACES
3 WHERE IT SAYS, "BUT DON'T WORRY, YOU'LL GET THE OTHER 95
4 PERCENT OF THE CLASS COMPENSATION FROM THE OTHER DEFENDANTS WHO
5 HAVEN'T SETTLED YET."

6 I JUST WASN'T -- I WASN'T CLEAR WHAT THAT MEANT.

7 MS. DERMODY: I'M SORRY, YOUR HONOR. WHERE ARE YOU
8 LOOKING?

9 THE COURT: WELL, THERE ARE A NUMBER OF LOCATIONS --
10 AND I CAN FIND A SPECIFIC PARAGRAPH IF THAT'S WHAT YOU WOULD
11 LIKE -- WHERE IT SAYS, "THIS IS ONLY 5 PERCENT OF THE CLASS
12 COMPENSATION, BUT WE CAN SEEK THE REMAINDER FROM THE REMAINING
13 DEFENDANTS WHO HAVEN'T SETTLED."

14 MS. DERMODY: YOU MAY BE LOOKING AT THE ORDER, YOUR
15 HONOR. I WAS LOOKING AT PARAGRAPH 7 OF THE ORDER, WHICH TALKS
16 ABOUT THAT 5 PERCENT AND 8 PERCENT.

17 THE COURT: UM-HUM.

18 MS. DERMODY: AND THEN IT TALKS ABOUT PLAINTIFFS'
19 ABILITY TO PURSUE ALL DAMAGES IN THE CASE FROM THE NON-SETTLING
20 DEFENDANTS.

21 THE COURT: YEAH. WHAT DOES THAT MEAN?

22 MS. DERMODY: SO THIS BASICALLY GOES TO THIS IDEA
23 THAT WHEN YOU -- WHEN YOU SETTLE A CASE WHERE THE DEFENDANTS
24 HAVE JOINT AND SEVERAL LIABILITY, THE NON-SETTLERS STILL HOLD
25 THE REMAINING LIABILITY LESS THAT SETTLEMENT AMOUNT IN THE REST

1 OF THE CASE.

2 SO IF YOU'VE GOT A SETTLEMENT FOR \$20 MILLION AND THE REST
3 OF THE DEFENDANTS -- AND THE WHOLE CASE WAS WORTH \$100 MILLION,
4 THE REMAINING DEFENDANTS WOULD GO TO TRIAL ON \$80 MILLION, 100
5 MILLION LESS THE 20 THAT WAS ALREADY RECOVERED, AND THAT YOU
6 STILL GET ALL OF THAT LIABILITY.

7 AND THAT WOULD BE, YOU KNOW, EVEN -- NO MATTER WHAT THE
8 DIFFERENT RATIOS WERE IN THE CASE BECAUSE THE LIABILITY THAT'S
9 JOINT AND SEVERAL DOESN'T RUN TO PERCENTAGES ACROSS THE
10 DIFFERENT DEFENDANTS. IT'S 100 PERCENT AS TO EACH ONE. AT
11 LEAST, THAT'S THE ALLEGATION IN THE ANTITRUST THEORY.

12 THE COURT: OKAY. I PRESUME THAT'S NOT HAPPENING
13 WITH THIS THE SETTLEMENT WITH THE REMAINING DEFENDANTS, SO --

14 MS. DERMODY: RIGHT.

15 THE COURT: -- DOES THAT AFFECT --

16 MS. DERMODY: AT THE TIME OF THIS SETTLEMENT, WE WERE
17 STILL PROSECUTING A CASE AGAINST THE NON-SETTLERS, AND THAT
18 CASE WAS GOING TO GO TO TRIAL FOR THE EXPOSURE IN THE CASE LESS
19 A SET OFF OF \$20 MILLION THAT WAS ALREADY PAID IN THE CASE.

20 THE COURT: UM-HUM.

21 MS. DERMODY: THAT CASE HAS NOW SETTLED AND WE'LL BE
22 PRESENTING THAT TO THE COURT ON MAY 22ND OR EARLIER.

23 THE COURT: UM-HUM.

24 MS. DERMODY: AND WE'LL THEN HAVE TO EXPLAIN TO THE
25 CLASS WHAT THE VALUE IS IN THAT SETTLEMENT.

1 THE COURT: WELL, I DON'T THINK WE SHOULD BE SAYING
2 THAT ANYMORE. THIS IS AN ORDER THAT'S GOING TO BE SIGNED IN
3 MAY, AND IF THAT'S NO LONGER TRUE -- OR DO YOU WANT TO JUST --

4 MS. DERMODY: WE COULD STRIKE THAT LANGUAGE, YOUR
5 HONOR, IN PARAGRAPH 7 FROM THE END OF LINE, WHATEVER THAT IS,
6 15 AND A HALF DOWN TO 19 AND A HALF.

7 THE COURT: WHERE DOES IT SAY AT THE TIME -- I GUESS
8 THAT'S ONE QUESTION I HAD IS I'M SUPPOSED TO BE JUDGING WHETHER
9 THIS IS FAIR AND REASONABLE AT THE TIME THE SETTLEMENT WAS
10 ENTERED VERSUS NOW.

11 SO MAYBE IT COULD JUST BE QUALIFIED THAT AT THE TIME THIS
12 SETTLEMENT WAS ENTERED INTO BY THE PARTIES, PLAINTIFF COULD
13 HAVE PURSUED ALL DAMAGES, OR JUST LIMIT THAT.

14 MS. DERMODY: YES, YOUR HONOR. I'LL MAKE THAT
15 CHANGE.

16 THE COURT: OKAY. ALL RIGHT.

17 MS. DERMODY: I'M SORRY. THAT ALSO APPEARS ON THE
18 TOP OF PAGE 4 -- EXCUSE ME, YOUR HONOR, FOR INTERRUPTING --
19 IT'S THE SAME CONCEPT. AT THE END OF PARAGRAPH 2 -- LINE 2 ON
20 TO, I GUESS, LINE 5, WHICH IS ABOUT THE IDEA OF SEEKING THE
21 FULL AMOUNT OF ESTIMATED DAMAGES FROM THE REMAINING DEFENDANTS.

22 THE COURT: YEAH. I -- I DON'T WANT TO BE
23 REPRESENTING THAT NOW AS A BASIS FOR WHY I'M GOING TO APPROVE
24 THIS WHEN IT'S NOT TRUE.

25 SO IT JUST NEEDS TO BE CLARIFIED SOME WAY WHEREVER IT

1 SHOWS UP. I READ IT A NUMBER OF TIMES. I'M SORRY I DIDN'T TAB
2 IT AND HIGHLIGHT IT, BUT YOU'RE GOING TO REDO THESE ANYWAY.

3 MS. DERMODY: YES, WE'LL FIX THAT, YOUR HONOR.

4 THE COURT: SO YOU CAN MAKE THAT CHANGE.

5 SO WHEN CAN YOU -- I REALIZE IT'S, IT'S -- WELL,
6 HOPEFULLY -- I MEAN, IF YOU HAVE THE CONTEMPORANEOUS BILLING
7 RECORDS, MAYBE IT'S NOT GOING TO BE A BURDENSOME EFFORT TO GIVE
8 THE BILLING RECORDS, BUT WHEN CAN YOU SUBMIT BOTH A NEW
9 PROPOSED ORDER WITH THE ANALYSIS OF THE HANLON FACTORS, A NEW
10 PROPOSED FEE ORDER THAT CLARIFIES THAT AN OBJECTION WAS MADE,
11 CLARIFIES SOME OF THE RISKS THAT THE NAMED PLAINTIFFS TOOK SUCH
12 THAT THE INCENTIVE PAYMENTS ARE WARRANTED, BECAUSE IT IS
13 SLIGHTLY HIGHER THAN USUAL, BUT I THINK THAT THEY DESERVE IT
14 BASED ON THE RISKS THAT THEY HAVE TAKEN TO THEIR FUTURE
15 EMPLOYABILITY IN THIS INDUSTRY, AND THE BILLING RECORDS? WHEN
16 CAN YOU SUBMIT THAT?

17 MS. DERMODY: I THINK DIFFERENT DATES FOR DIFFERENT
18 THINGS, YOUR HONOR.

19 THE COURT: OKAY.

20 MS. DERMODY: THE THINGS THAT ARE TOTALLY WITHIN THE
21 CONTROL OF THE PEOPLE STANDING IN FRONT OF YOU --

22 THE COURT: OKAY.

23 MS. DERMODY: -- I'M SURE WE CAN TURN THOSE ORDERS
24 AROUND IN 24 HOURS, OR MONDAY I WOULD SAY TO BE TOTALLY SAFE AT
25 THE LATEST.

1 THE COURT: OKAY, SURE.

2 MS. DERMODY: THINGS THAT ARE OUT OF CONTROL OF THE
3 PEOPLE AT THE PODIUM, I WOULD ASK FOR A WEEK, WHICH IS MAYBE
4 GETTING YOU DECLARATIONS FROM THE OTHER FIRMS --

5 THE COURT: WELL, I DON'T -- IF YOU'RE NOT -- I'M
6 OKAY WITH, FOR PURPOSES OF THIS ATTORNEYS' FEES REQUEST, OF
7 JUST HAVING LIEF SUBMIT THAT INFORMATION BECAUSE YOU'RE NOT
8 EVEN GETTING YOUR LODESTAR. SO THAT'S FINE.

9 MS. DERMODY: OKAY.

10 THE COURT: BUT IF YOU'RE GOING TO BE REQUESTING
11 ADDITIONAL FEES, WHICH I ASSUME YOU ARE, THEN I DO WANT TO SEE
12 IT FROM EVERYONE WHO'S ASKING FOR MONEY.

13 MS. DERMODY: ABSOLUTELY, YOUR HONOR. YES, WE'LL DO
14 THAT.

15 THE COURT: OKAY?

16 MS. DERMODY: YES, THANK YOU.

17 THE COURT: SO THE PROPOSED ORDERS, THEN THAT IS
18 MAY 5TH, AND --

19 MS. DERMODY: I'M SORRY. I SHOULD HAVE ASKED.

20 IS THAT OKAY FOR YOU?

21 MR. KIERNAN: YES.

22 MS. HENN: YES.

23 THE COURT: OKAY. SO THAT'S MAY 5TH.

24 AND THEN THE BILLING RECORDS FOR THE LODESTAR CHECK, DO
25 YOU WANT A WEEK? DO YOU NEED MORE THAN A WEEK? WHAT --

1 MS. DERMODY: SO -- OH, JUST LEIFF'S --

2 THE COURT: JUST LEIFF'S.

3 MS. DERMODY: OH, OKAY. A WEEK, AND WE'LL DO IT
4 EARLIER IF WE CAN. I MEAN, WE CAN PROBABLY GET IT OUT TO YOU
5 IN 24 HOURS.

6 BUT I WANT TO MAKE SURE I AUDIT THEM AGAIN, THAT THERE'S
7 NOT A STRAY -- A WRONG PERSON BILLING IT TO OUR FILE NUMBER.

8 THE COURT: OKAY. NOW, THAT'S MAY 8TH OF 2014.

9 NOW, IF YOUR FUTURE BILLING REQUESTS MAY BE SUBJECT TO ANY
10 OBJECTIONS, THEN I MAY NOT ALLOW YOU TO FILE THAT UNDER SEAL
11 AND IN CAMERA BECAUSE I THINK IF ANYONE IS GOING TO OBJECT,
12 THEY ARE ENTITLED TO SEE WHAT YOU'VE DONE AND WHETHER THAT'S
13 EFFICIENT, WHETHER THAT WAS BENEFICIAL TO THE CLASS, AND
14 WHETHER YOU SHOULD BE COMPENSATED FOR IT.

15 SO -- AND GOING FORWARD, FOR EVERYONE ELSE WHO WILL
16 SUBMIT, NEXT TIME, YOU KNOW, I WILL NEED TO KNOW, YOU KNOW,
17 THIS IS WHAT -- THIS IS THE HOURLY RATE THAT PAYING CLIENTS
18 PAY, OR THIS IS WHAT'S BEEN APPROVED. I WANT, YOU KNOW,
19 SUPPORT FOR THE BILLING RATE, THE CONTEMPORANEOUS BILLING
20 RECORDS AND THAT INFORMATION.

21 MS. DERMODY: THAT'S GREAT, YOUR HONOR.

22 I THINK THE ONLY QUESTION I MIGHT HAVE -- WE CAN DEFER
23 THIS UNTIL WE GET TO, YOU KNOW, THE NEXT PRELIMINARY APPROVAL
24 HEARING -- IS KIND OF THE PROCESS FOR WHETHER OR NOT WE FILE
25 THOSE DETAILED RECORDS PUBLICLY.

1 I UNDERSTAND YOUR HONOR'S CONCERN ABOUT OBJECTORS AND I
2 THINK THAT'S VERY VALID.

3 I'M WONDERING IF WE WOULD BE ABLE TO HAVE A PROCESS WHERE
4 WE DON'T FILE THEM PUBLICLY UNTIL, IF THERE ARE OBJECTIONS
5 ABOUT FEES -- AND THERE WELL MAY BE, I'M GUESSING THERE WILL
6 BE -- THAT WE MEET WITH THOSE OBJECTORS AND SHOW THEM THOSE
7 BILLING RECORDS AND THE DETAILED FORM, AGAIN, TO PRESERVE THE
8 WORK PRODUCT PRIVILEGE AS TO THE DEFENDANTS AND AS TO THE
9 PUBLIC SEEING WHAT OUR WORK WAS.

10 THE COURT: WELL, IT KIND OF DEPENDS ON THE MAGNITUDE
11 OF THE REQUEST. I MEAN, IF YOU'RE ASKING FOR 25 PERCENT OF
12 WHATEVER THAT SETTLEMENT AMOUNT WAS, I THINK THERE SHOULD BE A
13 HIGHER LEVEL OF SCRUTINY TO THAT REQUEST.

14 MS. DERMODY: THAT'S FAIR.

15 THE COURT: AND IF YOU NEED TO, YOU CAN JUST SAY, YOU
16 KNOW, "DRAFTED SECOND AMENDED COMPLAINT" AND NOT -- I MEAN, IT
17 SHOULD BE DETAILED ENOUGH SO PEOPLE CAN UNDERSTAND WHETHER THIS
18 WAS REASONABLE AND EFFICIENT.

19 BUT IF --

20 MR. SAVERI: YOUR HONOR, I --

21 THE COURT: THERE MUST BE SOME WAY THAT YOU CAN
22 SANITIZE IT. I DO REQUIRE IN OTHER CASES --

23 MS. DERMODY: SURE.

24 THE COURT: -- THAT IT BE PUBLIC, BECAUSE I THINK THE
25 TRANSPARENCY IS NECESSARY FOR CLASS MEMBERS TO KNOW, OR HAVE

1 THE OPPORTUNITY AT LEAST TO SCRUTINIZE IT IF THEY WANT TO AND
2 MAKE A DECISION, ESPECIALLY IF YOU'RE GOING TO BE ASKING FOR
3 THE NUMBERS THAT YOU MAY BE ASKING FOR.

4 MS. DERMODY: YOU'VE GIVEN US A RUNWAY NOW AND NOW
5 THAT WE HAVE THE INSTRUCTION, I THINK NOW WE HAVE THE CHANCE TO
6 GO TO OUR CO-COUNSEL, EVERYONE UNDERSTANDS WHAT IS EXPECTED
7 NOW, AND WE CAN FIGURE OUT HOW TO MAYBE NOT BE QUITE SO
8 DETAILED IN SOME OF THE DETAILS, BUT TO BE DETAILED ENOUGH TO
9 TELL PEOPLE WHAT THE TASK WAS.

10 BUT I THINK NOW WE HAVE A LOT MORE INFORMATION OF WHAT THE
11 COURT WOULD LIKE AND WE WILL ABSOLUTELY BE SURE TO GET THAT TO
12 YOUR HONOR THE NEXT GO ROUND. YOU'LL GET OUR COMPLETE UNDER
13 SEAL REPORT IN THE NEXT WEEK.

14 MR. SAVERI: YEAH. YOUR HONOR, I'M CONFIDENT --

15 THE COURT: YES.

16 MR. SAVERI: I'M CONFIDENT NOW THAT WE CAN, BEFORE
17 THE NEXT TIME, GO BACK THROUGH THE TIME SHEETS AND MAKE A
18 SUBMISSION KNOWING THAT SOMEONE IS GOING TO LOOK AT THEM AND
19 SATISFY OURSELVES THAT WE'RE NOT REVEALING ANYTHING
20 UNNECESSARY.

21 I'M CONFIDENT THAT WE'RE GOING TO BE ABLE TO GIVE PEOPLE
22 THE LEVEL OF DETAIL TO KNOW EXACTLY WHAT WORK WE DID ON A
23 DAY-BY-DAY BASIS SO THERE WON'T BE ANY DOUBT ABOUT THAT. I'M
24 CONFIDENT ABOUT THAT.

25 I ALSO WANT TO JUST MAKE SURE THAT YOU ARE SATISFIED WITH

1 THE SUBMISSION FROM ME AND MY FIRM. I'M HAPPY TO MAKE THE SAME
2 SUBMISSION. I CAN DO THAT WITHIN A WEEK'S TIME.

3 THE COURT: WELL, THE ONLY SUBMISSION I SEE FROM YOUR
4 FIRM IS FOR COSTS.

5 MR. SAVERI: RIGHT.

6 THE COURT: SO --

7 MR. SAVERI: SO I WOULD FEEL MORE COMFORTABLE -- I'M
8 GOING TO MAKE THE SUBMISSION THAT'S CONSISTENT WITH WHAT
9 MS. DERMODY'S OFFERED.

10 THE COURT: YOU MEAN FOR FEES?

11 MR. SAVERI: YES. AND --

12 THE COURT: OKAY.

13 MR. SAVERI: -- WHILE IT MAY NOT BE NECESSARY, IT'LL
14 AT LEAST BE IN THE RECORD AND I WOULD FEEL BETTER THAT YOU HAVE
15 THE CONFIDENCE, THAT YOU HAVE THE LEVEL OF DETAIL FROM ME AND
16 MY FIRM.

17 THE COURT: OKAY, THAT'S FINE. DO YOU WANT TO SUBMIT
18 THAT ON THE 8TH AS WELL?

19 MR. SAVERI: YES.

20 THE COURT: OKAY. ALL RIGHT. THAT'S FINE.

21 WHAT ELSE DO WE NEED TO DO FOR TODAY? BECAUSE I DIDN'T
22 REALLY HAVE ANY MORE QUESTIONS. IF I JUST LOOK THROUGH MY
23 NOTES, I DIDN'T REALLY THINK THERE WAS ANYTHING ELSE.

24 MS. DERMODY: I DON'T THINK THERE'S ANYTHING ELSE.

25 THE COURT: SO WHEN WILL FOLKS RECEIVE THEIR MONEY?

1 MS. DERMODY: SO WE HAVE THEN, AS SOON AS YOUR HONOR
2 SIGNS THE ORDER, PRESUMABLY --

3 THE COURT: UM-HUM.

4 MS. DERMODY: -- 30 DAYS TO DO THAT.

5 THE COURT: FROM THAT DATE?

6 MS. DERMODY: AND THEN AS SOON AS WE HAVE THE GREEN
7 LIGHT, I THINK IT'S GOING TO BE THE END OF THE SUMMER OR EARLY
8 FALL BEFORE THEY GET PAID. I THINK IT'S QUITE SOON.

9 THEY HAVE TO DO A LITTLE BIT OF THE DATA WORK BECAUSE THEY
10 HAVE TO FIGURE OUT, FOR THE CLASS MEMBER ALLOCATION FORMULA,
11 WHO CLAIMED -- WHAT THE TOTAL KIND OF WAGES IN THE CLASS TITLES
12 WERE FOR THAT TOTAL POPULATION AND WHAT THE FRACTION IS OF THAT
13 TOTAL FOR EACH CLAIMANT.

14 THE COURT: OKAY.

15 MS. DERMODY: THAT'S A LITTLE BIT MORE COMPLICATED
16 THAN JUST EACH PERSON GETS AN EQUAL SHARE.

17 BUT I THINK THAT CAN BE DONE RELATIVELY QUICKLY BECAUSE WE
18 NOW KNOW WHAT WE HAVE AND WE'VE GOT THE DATA.

19 THE COURT: OKAY. SO AS SOON AS THE APPROVAL ORDER
20 IS ENTERED, THEN YOU'RE GOING TO WAIT 30 DAYS FOR ANY APPEAL,
21 AND THAT WOULD PRESUMABLY BE BY AN OBJECTOR; CORRECT?

22 MS. DERMODY: CORRECT.

23 THE COURT: OR SOMEONE WHO HASN'T OBJECTED. WOULD
24 THEY HAVE THE ABILITY TO DO THAT?

25 MS. DERMODY: THEY WOULDN'T HAVE JURISDICTION TO DO

1 IT.

2 THE COURT: YOU HAVE TO HAVE OBJECTED?

3 MS. DERMODY: YES.

4 THE COURT: AND DO YOU HAVE ANY SENSE WHETHER THE SIX
5 WHO SUBMITTED --

6 MS. DERMODY: I DON'T HAVE ANY -- THERE'S, I BELIEVE,
7 FIVE, YOUR HONOR.

8 I DON'T THINK THERE'S ANY -- THERE'S NO INDICATION THAT
9 ANYONE IS GOING TO SHOW UP AGAIN.

10 MR. SAVERI: WE'VE SPOKEN TO A FEW OF THEM, YOUR
11 HONOR, AND I WOULD ECHO WHAT MS. DERMODY SAID.

12 THE COURT: YOU'RE RIGHT. IT IS FIVE. BUT THEY ARE
13 NOT GOING TO APPEAL?

14 MS. DERMODY: I HAVE NO BASIS TO THINK THAT THEY
15 WOULD, YOUR HONOR.

16 IN FACT, A COUPLE, I THINK, JUST DON'T LIKE THE FACT THAT
17 THIS LAWSUIT EXISTS. I DON'T THINK THEY'RE GOING TO BE ASKING
18 FOR GREATER MONEY OR -- THE MOTIVATION IS VERY LOW IN THIS
19 GROUP.

20 THE COURT: OKAY. ALL RIGHT. SO AFTER -- 30 DAYS
21 AFTER THE APPEAL, THEN WHAT HAPPENS? WHY WOULD IT TAKE UNTIL
22 FALL FOR PEOPLE TO GET PAID?

23 MS. DERMODY: ONLY BECAUSE I DON'T WANT TO PROMISE
24 THE COURT SOMETHING THAT'S NOT IN MY OWN CONTROL.

25 THE COURT: OKAY.

1 MS. DERMODY: THE CLAIMS ADMINISTRATOR SOMETIMES
2 TAKES LONGER THAN WE THINK IT WOULD, AND THEY HAVE TO DO THAT,
3 THAT DATA ANALYSIS TO MAKE SURE THAT THEY UNDERSTAND, OF THOSE
4 11,055 PEOPLE, WHAT THEIR WAGES WERE AND CLASS POSITION IN THE
5 CLASS PERIOD, WHAT THE TOTAL IS OF ALL THAT, AND THEN WHAT
6 THEIR FRACTIONAL AMOUNT IS, AND THEN MAKE SURE THAT THAT'S ALL
7 AUDITED AND THEN COME TO A PLACE WHERE THEY CAN ACTUALLY START
8 ISSUING CHECKS.

9 IT'S JUST THE WAY THINGS GO. WE'RE TALKING ABOUT INTO
10 AUGUST MINIMALLY I THINK FOR THAT TO BE COMPLETED. SO I'M
11 HEDGING IN SAYING I THINK SEPTEMBER IS PROBABLY SAFE, BUT WE
12 MAY HAVE TO COME BACK TO THE COURT IF THERE IS SOMETHING THAT
13 WE WEREN'T AWARE OF IN THAT SCHEDULE.

14 THAT WOULD BE TYPICAL --

15 THE COURT: OKAY.

16 MS. DERMODY: -- A FEW MONTHS AFTER FINALITY.

17 THE COURT: OKAY. ALL RIGHT. WHAT ELSE? IS THERE
18 ANYTHING ELSE THAT WE HAD TO COVER?

19 MR. KIERNAN: NO, YOUR HONOR.

20 THE COURT: I THOUGHT THIS WOULD GO MUCH LONGER, AND
21 THAT'S WHY I PLACED YOU LAST. I'M SORRY YOU ALL HAD TO WAIT.
22 I JUST ASSUMED THERE MIGHT BE OTHER PEOPLE WHO WANTED TO BE
23 HEARD. BUT SINCE THEY HAVE CHOSEN NOT TO COME, I THINK THAT'S
24 IT.

25 MS. DERMODY: AND WE'D LIKE TO HAVE PIZZA FOR US,

1 YOUR HONOR.

2 THE COURT: I'M SORRY?

3 MS. DERMODY: I THOUGHT THERE WAS A PROMISE FOR PIZZA
4 THAT YOU MIGHT HAVE FOR US IF WE SETTLED.

5 THE COURT: OH, DID I PROMISE PIZZA IF YOU SETTLED?

6 MS. HENN: YOU DID, YOUR HONOR.

7 (LAUGHTER.)

8 THE COURT: I AM SO SORRY. I FORGOT THAT. OKAY,
9 OKAY.

10 (LAUGHTER.)

11 MR. SAVERI: THERE WAS SOMETHING ABOUT --

12 THE COURT: OKAY, WAIT. IT IS NOT DONE YET.

13 (LAUGHTER.)

14 MR. KIERNAN: FAIR ENOUGH.

15 THE COURT: IT IS NOT DONE YET.

16 MR. SAVERI: SO NOW IS IT -- CAN WE -- WE HAVE A
17 JUSTIFIABLE RELIANCE ARGUMENT NOW WITH THAT COMMENT.

18 (LAUGHTER.)

19 MR. SAVERI: SO IF WE GET THIS DONE, YOUR HONOR --

20 THE COURT: WELL, LET'S SEE. I HAVEN'T -- I HAVEN'T
21 SEEN ANY MOTIONS, SO I AM MAKING NO COMMENT ON WHETHER THIS IS
22 GOING TO BE DONE OR NOT.

23 MR. SAVERI: FAIR ENOUGH, YOUR HONOR.

24 MS. DERMODY: THANK YOU, YOUR HONOR.

25 THE COURT: OKAY. ALL RIGHT. THANK YOU.

1 MR. SAVERI: THANK YOU, YOUR HONOR.

2 MS. HENN: THANK YOU, YOUR HONOR.

3 MR. KIERNAN: THANK YOU, YOUR HONOR.

4 (THE PROCEEDINGS WERE CONCLUDED AT 3:43 P.M.)

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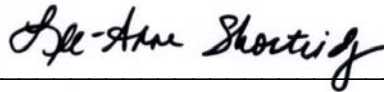
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MAY 7, 2014